IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13335 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JANTA HINDI HIGH SCHOOL

Versus

SUNITABEN GANESHCHANDRA SHARMA

Appearance:

1. Special Civil Application No. 13335 of 2000

MR RR VAKIL for Petitioner No. 1-2

MS SEJAL SUTARIA for Respondent No. 1

MR PREMAL JOSHI, AGP for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/08/2001

ORAL JUDGEMENT

#. Rule. Ms.Sejal Sutaria, learned advocate and Mr.Premal Joshi, learned AGP waives service of rule for

respondent Nos.1 and 2 respectively.

#. By consent of the parties, the matter is taken up for final hearing today.

#. The petitioner - institution has challenged the order passed by the Gujarat Secondary Education Tribunal in Application No.338/93. The Tribunal by the impugned order allowed the application filed by respondent No.1 herein and the order terminating the services of the original applicant was set aside. The petitioners herein thereafter filed review application but the same was dismissed on the ground of limitation. It was the case of respondent No.1 herein before the Tribunal that she was appointed as Assistant Teacher in the school and the management has terminated her services orally without following the procedure prescribed under section 36(1)(a) of the Act. It is also the case of the original applicant that she is M.A.B.Ed. and her appointment was approved and was getting the salary under the Direct Payment Scheme. The management without following procedure, orally terminated the services of respondent NO.1 from 4.7.1993. The advocate of the management had not remained present before the Tribunal at the time of hearing. The Tribunal, therefore, after considering the say and evidence of the applicant, allowed the application and the action terminating services of the applicant was set aside. The Tribunal also ordered that respondent No.1 herein was entitled to receive full salary from 1.7.1993 to 18.9.1994 within a period of three months from the date of receipt of the order. The said order is challenged in the present petition by the management.

#. Mr.R.R.Vakil appearing for the petitioners submits that, unfortunately the advocate of the petitioners could not remain present before the Tribunal at the relevant time. The Principal who was attending the matter has retired from service, and therefore, the aforesaid case went unattended. He submitted that, in the interest of justice, the petitioners may be given last opportunity to put forward the case before the Tribunal.

#. Ms.Sejal Sutaria, learned advocate for respondent No.1, strongly argued that in view of total negligence exhibited by the present petitioners, no opportunity should be given to the management for leading the evidence before the Tribunal. Alternatively, she submitted that, in any case, if the Court wants to give opportunity to the petitioners to adduce the evidence before the Tribunal, then petitioners should be subjected

to heavy costs.

#. After hearing both the advocates, I am of the opinion that the petitioners have shown negligence to a great extent by not remaining present before the Tribunal and the Tribunal was therefore, justified in proceeding ex parte against the management. Looking to the past conduct, the petitioners were asked to deposit Rs.5000/before this Court. Mr.Vakil for the petitioners states that the petitioners have already deposited Rs.5000/(Rupees Five Thousand Only) before this Court on 31.7.2001. The fact remains that the advocate of the petitioners could not remain present on the relevant day however, it happened because of the circumstances narrated by Mr.Vakil like the retirement of the Principal etc. and the management has therefore failed to adduce any evidence before the Tribunal. In my view, interest of justice would be served if respondent No.1 is permitted to withdraw Rs.5000/- (Rupees Five Thousand Only) which is deposited by the petitioners towards the costs of these proceedings and as a last chance, the petitioners are permitted to adduce evidence before the Tribunal so that if the petitioners have some say in the matter, ultimately their evidence and say may be available before the Tribunal and the Tribunal can consider the same. It is required to be noted that, even the review application was also preferred after the lapse of one year and 11 months. The Tribunal was, therefore, justified in rejecting the same. However, since the petitioners assured this court that they will remain present before the Tribunal without fail and they have no objection if the amount of Rs.5000/- deposited before this court is allowed to be withdrawn by respondent No.1, the petitioners are given a last chance to adduce evidence before the Tribunal and in that view of the matter, impugned order at Anenxure-A is set aside.

#. It is clarified that if the petitioners still continue to be negligent in remaining present and adducing evidence before the Tribunal, it will be open for the Tribunal again to proceed with the matter ex parte and in that case, it will not be open for the petitioners to make any grievance thereafter in this behalf. The matter is sent back only to give a last opportunity to the petitioners and to argue the matter on merits before the Tribunal. Since the proceedings are of 1983, the Tribunal may dispose of Application No.338/83 on or before 30/10/2001. As indicated above, if the petitioners fail to remain present again, the Tribunal will be free to decide the matter in absence of the present petitioners. Respondent No.1 is permitted to

withdraw the costs of Rs.5000/- which is deposited by the petitioners before this Court.

#. In view of the above, the petition stands allowed accordingly. Rule is made absolute to the aforesaid extent.

(P.B.Majmudar,J)
(pathan)